

THACHER PROFFITT & WOOD LLP
50 Main Street
White Plains, New York 10606
Kevin J. Plunkett
Darius P. Chafizadeh
Attorneys for Defendants

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE GUARDIAN NEWS, INC. and SELIM
ZHERKA,

Plaintiffs,

-against-

PHILIP AMICONE, individually,
EDMUND HARTNETT, individually,
JOHN A. LISZEWSKI, individually,
CITY OF YONKERS, New York,
PAUL WOOD, individually, POLICE
OFFICERS JOHN DOE'S #1 to # 20,
Individually, and SANITATION WORKERS
#1 to # 20,

Defendants.

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

JOHN LISZEWSKI, being duly sworn, states the following under penalty of perjury:

1. I am the Commissioner of the Department of Public Works (the "DPW") for the City of Yonkers (the "City").
2. I have held this position since September of 1996.
3. I submit this affidavit in opposition to the motion of Plaintiffs The Guardian News, Inc. (the "Guardian") and Selim Zherka ("Zherka") (collectively, the Guardian and Zherka will be referred to herein as "Plaintiffs"), seeking a preliminary injunction barring Defendants from:

ECF Case

07 Civ. 07078 (CLB)

AFFIDAVIT OF JOHN LISZEWSKI IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

- (i) confiscating any newsracks placed by the Guardian on city-owned property in the City of Yonkers (the "City") for the distribution of The Westchester Guardian (the "Newspaper");
- (ii) confiscating any copies of the Newspaper intended to be distributed on city-owned premises within the City;
- (iii) threatening employees of the Guardian with arrest/incarceration for distributing the Newspaper within the City;
- (iv) threatening Zherka with arrest/incarceration for distributing the Newspaper within the City;
- (v) issuing to the Guardian employees and Zherka appearance tickets charging them with violating the City Charter for distributing the Newspaper; and
- (vi) directing Defendants to forthwith return to Plaintiffs all confiscated newsracks and newspapers.

4. I submit this affidavit on my personal knowledge and upon information and belief, the sources of which are my personal involvement in this matter and the review of documents maintained by the City.

5. I submit this affidavit to provide the Court with a factual account of the DPW's involvement in the facts which are relevant to the pending motion.

6. In or about July-August 2007, after learning that there were a large number of Guardian newsrack boxes throughout the City that were obstructing sidewalks and pedestrian traffic, I instructed the DPW employees to remove newsrack boxes that were blocking sidewalks and impeding pedestrian traffic and return said boxes to the DPW facility.

7. As a result, DPW employees removed 35 Guardian newsrack boxes from City sidewalks as they caused a potential danger to pedestrians and motorists in the City. Copies of photographs of Guardian newsrack boxes in the DPW facility are annexed hereto as Exhibit A.

8. It should be noted that a number of the Guardian newsrack boxes were not removed by DPW employees and, to this day, a number of Guardian newsrack boxes are located

throughout the City. Copies of photographs of certain Guardian newsrack boxes on City sidewalks as of August 23, 2007 are annexed hereto as Exhibit B.¹

9. Also, on or about August 21, 2007, after the filing of this lawsuit by Plaintiffs, the City's special counsel, Thacher Proffitt & Wood LLP, informed Plaintiffs' counsel that the Guardian newsrack boxes were available to be picked up from the City's DPW facility on Lake Avenue. A copy of the August 21, 2007 Letter from Thacher Proffitt & Wood LLP to Plaintiffs' counsel indicating same is annexed hereto as Exhibit C.

10. The City's attorneys also informed Plaintiffs' counsel that newsrack boxes placed on City streets must comply with the Yonkers City Code. See Exhibit C.

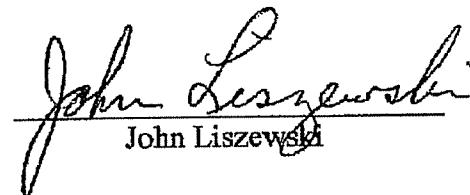
11. On or about August 23, 2007, 35 Guardian newsrack boxes were picked up by the Guardian at the City's DPW facility on Lake Avenue at approximately 3:30 p.m. See Exhibit A.

12. The City and the DPW do not wish to inhibit anyone's right to speak or disseminate a message. However, the City has laws that must be complied with by everyone and every entity.

13. It is my belief that there is no need for this Court to issue an injunction. Indeed, Plaintiffs are permitted to distribute the Newspaper in the City, but must do so in accordance with the law.

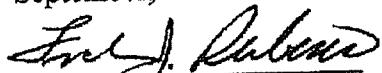
¹ Although the placement of some of the Guardian newsrack boxes may violate the Yonkers City Code, they have not been removed because of this lawsuit.

WHEREFORE, based on the foregoing, Plaintiffs' motion for a preliminary injunction should be denied.



John Liszewski
John Liszewski

Sworn to this 20th day of
September, 2007



Frank J. Rubino

Notary Public

FRANK J. RUBINO
Notary Public, State of New York
No. 03-4941813
Qualified in Bronx County
Commission Expires August 1, 2010